

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.651 of 2007

G.Karthik

.. Petitioner

Vs

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Prohibition & Excise Department,
Fort St. George,
Chennai 600009.

2. The Commissioner of Police,
Salem City.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Ms.R.Subadra Devi

For Respondents: Mr.N.R.Elango

Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner, who is a relative of the detenu, Periyasamy, son of Nallappan, who was incarcerated by order dated 30.12.2006 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Drug Offender, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed

by the second respondent dated 30.12.2006 in C.M.P.No.43/D.O./Salem City/2006 against the petitioner's uncle, Periasamy, son of Nallappan, now confined at Central Prison, Salem, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. According to the detaining authority, viz., the second respondent, the ground case is said to have taken place on 25.12.2006. On the basis of the information given by a secret informant, the Head Constable, NIB C.I.D., Salem, along with police party and the informant, proceeded to the place of occurrence nearly Salem junction main road, where they found three persons were standing in front of a locked shop and one among them was having a white colour plastic urea bag. The informant identified that person and hidden away. The police party stopped that person and interrogated. During interrogation, it was found that the said person, the detenu herein, is possessing ganja in the said plastic urea bag. He gave a confession statement. A case in Crime No.104/2006 was registered against the detenu on the file of Salem NIB CID for the offence punishable under Section 8(c) r/w 20(b)(ii) (B) of NDPS Act.

3. The second respondent, taking note of this case as a ground case and finding that there are 3 adverse cases pending against the detenu for the offence punishable under Section 8(c) r/w 20(b)(ii) (B) of NDPS Act in Crime Nos.44/2004, 39/2005 and 39/2006 on the file of Salem NIB CID, and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Drug Offender.

4. The main contention of the learned counsel for the petitioner is that the detaining authority has not applied his mind while passing the impugned order of detention dated 30.12.2006 on the ground that even though the Sponsoring Authority had stated that the requisition for chemical analysis was sent on 25.12.2006, he had signed the same on 28.12.2006 as evident from page 58 of the booklet.

5. On a perusal of the entire materials placed before us, we are satisfied that there is an error apparent on the face of the record as contended by the learned counsel for the petitioner. The detaining authority had failed to take note of the discrepancy that the Sponsoring Authority had stated that the requisition for chemical analysis was sent on 25.12.2006, but he signed the same on 28.12.2006, which would go to show that the detaining authority had not applied their mind before passing the order of detention.

6. In view of the above, the impugned order of detention dated 30.12.2006 is set aside. The habeas corpus petition is allowed and the detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ATR

To:

1. The Secretary to Government,
State of Tamil Nadu,
Prohibition & Excise Department,
Fort St. George,
Chennai 600009.
2. The Commissioner of Police,
Salem City.
3. The Superintendent,
Central Prison, Salem.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government
Public (L & O) Fort St. George,
Chennai-9

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